

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL 257,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Public Case No. R 86-013
	)	
CURATORS OF THE UNIVERSITY OF	)	
MISSOURI, d/b/a KOMU-TV,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the filing by International Brotherhood of Electrical Workers, Local 257, of a Petition for Certification as public employee representative of certain employees of the University of Missouri, working at the University's television station, KOMU-TV. A hearing was held on April 8, 1986, in Jefferson City, Missouri, at which representatives of Local 257 and the University were present. The case was heard by State Board of Mediation Chairman Mary Gant. Upon agreement by the parties, the record of the hearing was submitted to employer member Milton Talent, and employee member James O'Mara for decision. The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

The Curators of the University of Missouri (hereinafter "University"), a public corporation established by statute and the Missouri Constitution, owns and operates a

television station known as KOMU-TV. The University, which includes campuses at Columbia, Kansas City, Rolla and St. Louis, has more than 10,000 employees, including approximately 56 employees who work at KOMU-TV. The International Brotherhood of Electrical Workers, Local 257, seeks to represent approximately 17 employees classified as broadcast engineers who work at the television station.

The University is governed by the Board of Curators, which has promulgated rules and regulations applicable to all the campuses of the University and the departments therein, including KOMU-TV. There has been a concerted effort by the University to institute system-wide policies concerning personnel and administrative matters throughout the four campus system. The Board of Curators makes all decisions concerning personnel policies. A number of committees provide input to the Board concerning such matters. A committee known as Personnel Directors Advisory Council, comprised of the personnel directors of each campus and the UMC hospital and clinics, and chaired by the Assistant Vice President of the University's Human Resources Services, makes recommendations to the University's administrative management council. That council, comprised of the Vice-Chancellors from each of the four campuses and chaired by the Vice-President of Administrative Affairs, in turn makes recommendations to the General Officers. The General Officers include the President of the University, the Chancellors from each campus and two Vice-Presidents. They make their recommendations concerning personnel matters to the Board of Curators which has the final authority to make policy changes.

The decisions made by the Board of Curators have been compiled into the "University's Personnel Policy Manual." Subjects covered in the manual include, inter alia, wages and salaries, fringe benefits, discipline, grievances, transfers, promotions, sick leave, vacation and union membership. These policies concerning the terms and conditions of employment of the University's employees are uniformly applied to employees at each of the University's four campuses.

The University has classified each of its employees as falling within one of eight categories. This categorization follows standards set by the National Center of Higher Management Systems. Those categories are: executive, teaching/research, professional, technical, office, crafts, service and students. The broadcast engineers have been categorized as "technical" employees, which includes all University positions requiring specialized knowledge or skills that may be acquired through experience or completion of technical education below a bachelor's degree.

In the same technical category as the broadcast engineers are some 150 other positions including such varied jobs as animal surgical technician, artists, book buyer, dental assistant, occupational therapy assistant, computer programmer, data controller, glass blower, reactor operator and technical writer. The technical employees work in approximately 182 separate departments throughout the four-campus system.

KOMU-TV occupies its own building approximately 6 miles south of the Columbia campus. It is the only television station operated by the University. The station operates under an annual budget set by the University, with said budget designed so that the station is self-sufficient, in that the University anticipates that the station will generate sufficient revenues to cover operation and maintenance costs. Although the physical plant is situated closely to a farming operation by the University, there is minimal contact between the University employees and those employees working at the television station. The station is run by the general manager who is responsible for the day to day operation of the television station. The general manager has his office at the station and all functions of the business such as sales, promotion, production and administration are performed at the television station under the direction of the department heads within KOMU-TV. Personnel and payroll records of KOMU-TV employees are maintained at the station.

There are 17 employees classified as broadcast engineers working at KOMU-TV: three as broadcast engineer I, five as broadcast engineer II, and nine as broadcast

engineer III. The University requires that a broadcast engineer I have an associate degree which includes course work in electronics, radio or television, or two to three years of broadcast experience. A broadcast engineer's job function is to operate, maintain and repair the broadcasting equipment used at KOMU-TV. The employees workday must be scheduled to accommodate the 19-hour broadcast day of the television station. Because broadcast engineers must be present at all times during the broadcast day, their hours vary within the 19-hour schedule. The employees classified as broadcast engineer I primarily operate the camera and videotape equipment and perform routine maintenance on said equipment. They, along with those classified as broadcast engineer IIs, operate the master control equipment, which allows transmission of a television signal from various sources such as videotape, satellite or live camera. The broadcast engineers are required to maintain a daily operating log documenting the station's programming.

Those classified as broadcast engineer I are given on-the-job training to become more familiar with the equipment. Once more skill and familiarity with the equipment is acquired, the broadcast engineer is promoted to a broadcast engineer II. Those in this classification have duties identical to those of broadcast engineer Is, except they are more experienced and are able to handle more complex repair and maintenance work on the equipment. After the broadcast engineer II becomes skilled and experienced enough to handle the most complex repair and maintenance work, they may be elevated to the position of broadcast engineer III. Those employees rely on technical manuals and schematic drawings to repair and maintain the often complex electronic equipment. There is no evidence that any other employees within the University, including those classified as "technical" employees have the same skills or duties as the broadcast engineers, in that no other television station exists within the University.

## **CONCLUSIONS OF LAW**

Local 257 has petitioned to be certified as public employee representative of a bargaining unit comprised of the 17 broadcast engineers employed at KOMU-TV. At the hearing, the University raised by motion the question of whether KOMU-TV is a "public body" within the meaning of Section 105.500(3), RSMo. 1978. The University's motion was filed in the alternative either to dismiss the petition or to substitute the Curators of the University of Missouri for the respondent. Without question, KOMU-TV is owned and operated by the Curators of the University of Missouri. The Curators of the University of Missouri is a public corporation established by statute and the Missouri Constitution. Given that other courts have recognized that departments of the University of Missouri have no separate legal existence apart from the University [see Mackey v. Camp, 415 F.Supp. 323 (W.D. Mo. 1976)], the Board rules that Curators of the University of Missouri is the only "public body" over which the Board has jurisdiction. Accordingly, the Curators of the University of Missouri, doing business as KOMU-TV, shall be substituted for the respondent KOMU-TV.

As stated above, Local 257 contends that the appropriate bargaining unit should be those 17 employees who work at KOMU-TV as broadcast engineers. The University, however, argues that an appropriate unit should be a system-wide, four-campus unit composed of all non-supervisory employees performing technical functions for any department of the University of Missouri. The issue before the Board, therefore, is whether the appropriate bargaining unit should consist of the 17 broadcast engineers or include all employees classified as "technical employees" throughout the University system. An appropriate bargaining unit is defined by Section 105.500 (1) RSMo. 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently looked to a number of factors in determining whether employees have such community of interest. Those factors, as set forth in AFSCME, Missouri State Council 72 v. Dept. of Corrections and Human Resources, Case No. 83-002 (SBM 1984), and other cases, include:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills and training of the employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

Without question, the broadcast engineers have identical employment benefits to those workers classified by the University as technical employees. Policies concerning wages, sick leave, vacation, disciplinary procedures, etc. apply to all University employees throughout the four campus system. Similarly, the labor-relations policy of the University is centralized so that all employees within the University's technical classification are governed by the same decisions. However, the record as a whole indicates that the broadcast engineers hold positions that are unique within the

University system and, therefore, must be considered a separate appropriate bargaining unit.

It is undisputed that the broadcast engineers work at the only television station owned by the University. KOMU-TV is some six miles from the Columbia campus and is thus geographically separate from all four of the University campuses. The broadcast engineers have little or no contact or interchange with the thousands of technical employees that would be included in the University sought system-wide unit.

The University argues that all technical employees have similar qualifications, skills and training and, further, the work performed by all technical employees have similar characteristics in that many involve the operation and maintenance of specialized equipment. However, it is difficult to ascertain any such similarity existing between such a diverse unit that would include not only broadcast engineers but also book buyers, artists, dental assistants and glass blowers. To the contrary, the record indicates that the broadcast engineers share qualifications and skills unique to those involved in the technical aspects of broadcasting a television signal. In short, there is no evidence that any other technical employees within the University-wide unit share the qualifications, training or skills of the broadcast engineers.

The University's strongest argument involves the overfragmentation of bargaining units. In support of its position, the University sites the NLRB decision in Cornell University, 74 LRRM 1269 (June 12, 1970) and several Board decisions which have consistently warned against the dangers of overfragmentation. For the reasons set out below, however, the Board rejects the University's position. In Public Service Employees' Local Union 45 v. University of Missouri, Case No. 76-005(SBM 1977), the sole issue for determination was whether the University should be viewed as one state-wide entity for the purposes of determining bargaining units or whether instead each of

the four campuses should be considered separately. The Board ruled that the University should be viewed as one entity in that there existed sufficient integration and centralization so as to create a community of interest between all non-academic employees. The Board's ruling in the present case would, on its surface, appear to contradict the 1977 decision. However, that decision held only that when considering whether certain employees within the University system share a community of interest, the Board should look to the University as a whole rather than to each of the four campuses. In the instant case, there is no evidence that any technical employees working at any of the four campuses share a clear and identifiable community of interest with the broadcast engineers whose positions appear unique within the University.

The University also cites Missouri Nurses' Association v. University of Missouri Medical Center, Case No. 76-008(SBM 1978) in support of its overfragmentation argument. In that case, the Board ruled, inter alia, that the appropriate bargaining unit should consist of all nurses employed throughout the four campus system. The University in that case argued that the appropriate unit should consist of all professional employees working within the University. The Board noted that despite its ruling in Public Services Employees Local Union 45 v. University of Missouri, Case No. 76-005(SBM 1977), it was not foreclosed from finding separate bargaining units for registered nurses, whose duties are unique. Similarly, given that KOMU-TV is the only television station within the University and that the broadcast engineers possess unique skills and qualifications, the Board finds their separate unit appropriate. An additional reason cited in Missouri Nurses' Association, supra, for rejecting the University's argument that an all professional employee unit be certified was that no other professionals had petitioned for certification in that case. The same reasoning is

applicable to the instant case, in that no other technical employees have petitioned to be included in the appropriate bargaining unit.

The University also cites several cases in which the Board certified a state-wide unit. Those cases, namely, Missouri Association of Clerks, Union Local No. 610 v. 21st Judicial Circuit, Case No. 81-004B (SBM 1981) and Southwestern Joint Council No. 29 v. Division of Employment Security, Case No. 84-111(SBM 1984), involve employees who had identical skills and qualifications who were working at various locations throughout the state. The facts of this case are clearly distinguishable from those involving court clerks and the employees of the Division of Employment Security in that the broadcast engineers' skills, qualifications and job functions are clearly unique within the University system.

Finally, in further support of its argument concerning overfragmentation, the University cites Cornell University, supra, in which the NLRB certified a university--wide bargaining unit despite a great geographical distance between the various Cornell campuses. However, in that case the NLRB took into consideration that there was a union seeking to represent all the employees in question. Cornell University, 74 LRRM at 1277. Similar reasoning was used in this Board's decision in the Missouri Nurses Association, supra, in rejecting the university's argument that an all professional employee unit be certified. In that case, the Board deemed important that no other professionals had petitioned for certification. The same reasoning is applicable to the instant case, in that no other technical employees have petitioned to be included in the appropriate bargaining unit. This factor, coupled by the uniqueness of the skills and job functions of the broadcast engineers, dictates that a separate unit of broadcast engineers be recognized as an appropriate bargaining unit in this case.

In deciding this case, the Board further notes that it is charged with determining an appropriate unit wherein a bargaining representative may meet and confer with a public body. Such unit need not be the only appropriate unit or the most appropriate unit. The law requires only that the unit be "appropriate." Morand Bros. Beverage Co., et al., 91 NLRB 409; Federal Electronic Corporation, 157 NLRB 1130; National Case Register Co., 166 NLRB 173; Capital Bakers, Inc., NLRB 904, 905. In the instant case, although it is clear that there are some factors to support a finding that unit encompassing all technical employees of the University would be an appropriate unit, it is equally clear that the broadcast engineers at KOMU-TV have a sufficient community of interest to justify their establishment in a bargaining unit apart from the rest of the technical employees of the University.

#### **DECISION**

It is the decision of the State Board of Mediation that an appropriate unit of bargaining employees is as follows: All broadcast engineers working at the University's television station known as KOMU-TV.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who are employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible

to vote shall vote whether or not they desire to be represented for the purposes of exclusive recognition by Local 257, International Brotherhood of Electrical Workers.

It is hereby ordered that the University shall submit to the Chairman of the State Board of Mediation, as well as to Local 257, within fourteen days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who are employed during the payroll period immediately preceding the date of this decision.

Signed this 24th day of July, 1986.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant  
Mary L. Gant, Chairman

/s/ James O'Mara  
James O'Mara, Employee Member

/s/ Milton O. Talent  
Milton O. Talent, Employer Member